



# RULE-MAKING ORDER

**CR-103 (June 2004)**  
(Implements RCW 34.05.360)

Agency: Secretary of State

☐ Permanent Rule  
☒ Emergency Rule

Effective date of rule:

**Permanent Rules**

☐ 31 days after filing.  
☐ Other (specify) \_\_\_\_\_ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Effective date of rule:

**Emergency Rules**

☒ Immediately upon filing.  
☐ Later (specify) \_\_\_\_\_

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes ☒ No If Yes, explain:

**Purpose:** To promote consistency in county canvassing board decisions statewide and to comply with requirements set by the Help America Vote Act.

Citation of existing rules affected by this order:

Repealed:

Amended: 434-261-070, 434-261-075

Suspended:

Statutory authority for adoption: RCW 29A.04.611

Other authority :

**PERMANENT RULE ONLY (Including Expedited Rule Making)**

Adopted under notice filed as WSR \_\_\_\_\_ on \_\_\_\_\_ (date).

Describe any changes other than editing from proposed to adopted version:

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: \_\_\_\_\_ phone ( ) \_\_\_\_\_  
Address: \_\_\_\_\_ fax ( ) \_\_\_\_\_  
e-mail \_\_\_\_\_

**EMERGENCY RULE ONLY**

Under RCW 34.05.350 the agency for good cause finds:

- ☐ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- ☒ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: The federal Law, Help America Vote Act, requires each state to adopt rules to determine what a valid vote is for each voting system. These WACs will require the Secretary of State to adopt a manual for that purpose in time for the November 7 General Election.

Date adopted: October 17, 2006

NAME (TYPE OR PRINT)

Steve Excell

SIGNATURE

TITLE

Assistant Secretary of State

**CODE REVISER USE ONLY**

CODE REVISER'S OFFICE  
STATE OF WASHINGTON  
FILED

OCT 17 2006

TIME

WSR

348  
06-21-115

AM

PM

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.  
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.  
A section may be counted in more than one category.**

**The number of sections adopted in order to comply with:**

<b>Federal statute:</b>	New	<u>1</u>	Amended	<u>2</u>	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	New	_____	Amended	_____	Repealed	_____

**The number of sections adopted at the request of a nongovernmental entity:**

New	_____	Amended	_____	Repealed	_____
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**The number of sections adopted in the agency's own initiative:**

New	<u>1</u>	Amended	<u>2</u>	Repealed	_____
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	<u>1</u>	Amended	<u>2</u>	Repealed	_____
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**The number of sections adopted using:**

<b>Negotiated rule making:</b>	New	<u>1</u>	Amended	<u>2</u>	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION (Amending WSR 06-11-042, filed 5/10/06, effective 6/10/06)

**WAC 434-261-070 Manual inspection of ballots.** (1) Upon receiving absentee ballots and upon breaking the seals and opening the ballot containers from the precincts, all voting positions on voted ballots shall be manually inspected on both sides of the ballot to determine whether the ballot will be readable by the vote tabulating system. This manual inspection is a required part of processing ballots.

(2) The inspection of ballots tabulated at the poll site is not required provided that the poll site ballot programming provisions of RCW 29A.44.340 are in effect.

(3) If the manual inspection process detects any physically damaged ballots, unreadable ballots which might not be correctly counted by the tabulating equipment, or marks that differ from those specified in the voting instructions, (~~but the marks clearly form a discernible and consistent pattern on the ballot to the extent that the voter's intent can be clearly determined,~~) the county auditor (~~may either:~~

~~(a) Refer the ballots to the county canvassing board, or~~

~~(b) Duplicate the ballots if authorized by the county canvassing board.~~

~~If the voter's intent is not clear, the ballot must be referred)) shall refer such ballots to the county canvassing board.~~

(4) Nothing in this section shall alter the authority of the county canvassing board to delegate in writing, to the county auditor or the county auditor's staff, the performance of any task assigned by law to the canvassing board as set forth in RCW 29A.60.140(2).

AMENDATORY SECTION (Amending WSR 06-14-047, filed 6/28/06, effective 7/29/06)

**WAC 434-261-075 Manual inspection of ballot--Acceptability of marks.** (1) If the voter returns voting responses by mail on any form other than the ballot sent, the votes thereon shall be acceptable and tallied provided that:

(a) Only votes for offices or measures for which the voter is eligible are counted.

(b) The candidate or measure response position for which the voter is voting can be clearly identified.

(c) The ballot issued is not returned, or if returned,

contains no marks indicating an attempt to vote it.

(d) A valid signature on an absentee oath is on file with the county auditor.

The votes accepted must then be duplicated to a ballot that can be read by the electronic voting equipment.

(2) Corrected absentee ballots shall be counted in the following manner:

(a) If a voter follows the instructions for correcting a vote, either the written instructions or other instructions given to the voter by the county auditor, the correction shall be made by duplicating the ballot and then tabulating the duplicated ballot.

(b) If a voter appears to have corrected the ballot in a manner other than as instructed, the vote for that candidate or issue shall not be tabulated unless the voter provides written instructions directing how the vote should be counted or has clearly attempted to erase a mark.

(3) If a voter has indicated a write-in vote on the ballot which duplicates the name of a candidate who already appears on the ballot for the same office, the ballot shall be duplicated to count one vote for the candidate indicated. Such a vote shall be counted pursuant to RCW 29A.60.021.

(4) If a ballot contains marks that differ from those specified in the voting instructions, those marks shall not be counted as valid votes unless ~~((there is a discernable and consistent pattern, to the extent that the voter's intent can clearly be determined. If there is such a pattern, the ballot shall be duplicated to reflect the voter's intent))~~ the marks are made in the same manner for each office or issue for which the voter has indicated a preference. Voter intent in any single contest may not be determined based upon a pattern of partisan voting on the ballot.

#### NEW SECTION

**WAC 434-261-086 Statewide standards on determining voter intent.** (1) The secretary of state, pursuant to the provisions of the Help America Vote Act, shall prepare and distribute to each county canvassing board a manual that defines what constitutes a vote and what will be counted as a vote for each category of voting system used in the state, consistent with state law and administrative rules. The manual shall contain reasonably comprehensive illustrations of irregularly marked ballots and shall provide standards for determining whether or not a valid vote has been cast.

(2) The secretary of state shall periodically review the manual as necessary to keep it updated. Wherever practical the secretary shall seek input from county canvassing boards and other interested parties to ensure that the manual remains as

comprehensive as possible. The currently adopted manual shall be posted on the secretary of state web site ([www.secstate.wa.gov](http://www.secstate.wa.gov)) for public review or reference at any time.

(3) Compliance by county canvassing boards with the standards set forth in the manual shall be mandatory.